

to the officer, and it is no cause of error that there is no such previous oath, *Anon. Cro. Car. 316; Leigh v. Kent supra.*

Stat. 4 Ann. c. 16, s. 5, did not extend to penal actions, *Morgan v. Luckup*, 2 Str. 1044, recognized in *Heyrick v. Foster*, 4 T. R. 701; but the Code, Art. 75, sec. 10,³ provides that the defendant *in any action* may plead as many several matters as he may think necessary, see *Bac. Abr. Action qui tam*, D.

The plaintiff in declaring must negative the exemptions or exceptions in the enacting clause giving the penalty, or in any other clause to which the enacting clause refers, but not those contained in a subsequent proviso to which the enacting clause does not refer, nor those contained in a subsequent statute; the defendant in these cases must bring himself within the exempting proviso, *Steel v. Smith*, 1 B. & A. 94; *R. v. Pratten*, 6 T. R. 559; *Van Boven's case*, 9 Q. B. 684, *per Erle J.*; *Pilkington v. Cooke*, 16 M. & W. 615; *Rawlins v. the State*, 2 Md. 201, and cases there cited; *Kellenbeck v. The State*, 10 Md. 431; *Franklin v. The State*, 12 Md. 236; *Parkinson v. The State*, 14 Md. 184.⁴ However a saving proviso may be given in evidence on the general issue, *Pelly v. Rose*, 12 M. & W. 435; and see note to 4 H. 7, c. 20.

The 4th section, by which defendants are permitted to plead the general issue and give the special matter in evidence, it is held, however, does apply to penal actions given by subsequent Statutes, see *Earl Spencer v. Swannell*, 3 M. & W. 154; *Jones v. Williams*, 4 M. & W. 154, an action of debt on 11 Geo. 2, c. 19, s. 4. See 1 Wms. Saund. 38 b, *Jones v. Pope*, *in notis.*

³ Code 1911, Art. 75, sec. 10, (as now amended).

⁴ See *Barber v. State*, 50 Md. 161; *Lamb v. State*, 67 Md. 541; *Stearns v. State*, 81 Md. 341.

CAP. XII.

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An Act to enlarge and make perpetual the Act made for Ease in Pleading, against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the seventh Year of his Majesty's most happy Reign.

Whereas an Act, intituled *An Act for Ease in Pleading, against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables; and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the seventh Year of his Majesty's most happy Reign of England*, was made to continue but for seven Years, and from thence to the end of the next Parliament after the said seven Years, which by Experience hath since been found to be a good and profitable Law: